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ABSTRACT

This paper is presented in three parts. Part One considers the nature of the need for facilities, programs, and services for older people, sets forth long-range goals, reviews available information with respect to this area of action, and identifies major shortcomings of present approaches. Part Two is devoted to consideration of needs, goals, current knowledge, and gaps in the increasingly important areas of (A) Consumer Services and (B) Legal Services. Part Three sets forth and discusses ten issues which focus discussion on the formulation of recommendations looking toward the development of national policies aimed at providing adequate and relevant services for the older population. (Author/LAA)

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Background and Issues

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FACILITIES, PROGRAMS, AND SERVICES

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1971 WHITE HOUSE CONFERENCE ON AGING

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1971 WHITE HOUSE CONFERENCE ON AGING

FACILITIES, PROGRAMS, AND SERVICES

BACKGROUND

Robert Morris, D.S.W.

CONSUMER AND LEGAL SERVICES

Ruth Lauder

ISSUES

THE TECHNICAL COMMITTEE ON FACILITIES, PROGRAMS, AND SERVICES

with the collaboration of the authors

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WHITE HOUSE CONFERENCE ON AGING
Washington, D.C. 20201
April 1971

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FOREWORD

This paper on Facilities, Programs, and Services with special sections on Consumer Services and Legal Services provides information for the use of leaders concerned with the development of proposals and recommendations for national policy consideration and of delegates to the National White House Conference on Aging to be held in Washington, D.C., in November-December 1971.

The paper is presented in three parts. Part One considers the nature of the need for facilities, programs, and services for older people, sets forth long-range goals, reviews available information with respect to this area of action, and identifies major shortcomings of present approaches. This part was written by Robert Morris, D.S.W., Professor of Social Planning, the Florence Heller School for Advanced Studies in Social Welfare, Brandeis University.

Part Two is devoted to consideration of needs, goals, current knowledge, and gaps in the increasingly important areas of (A) Consumer Services and (B) Legal Services. Part Two was prepared by Ruth Lauder, long-time Information Specialist in the field of health and welfare, from materials provided by the Technical Consultants.

In Part Three of the paper ten issues are set forth and discussed from different points of view. The issues were formulated by the Technical Committee on Facilities, Programs, and Services for the consideration of participants in White House Conferences on Aging at all levels. The purpose of the issues is to focus discussion on the formulation of recommendations looking toward the development of national policies aimed at providing adequate and relevant services for the older population. The proposals and recommendations developed in Community and State White House Conferences and by National Organizations will provide the grist for the use of the delegates to the National Conference in their effort to formulate a National Policy for Aging.

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Chairman, National Advisory Committee
for the 1971 White House Conference
on Aging

John B. Martin
Special Assistant to the President
for the Aging and Director of the
1971 White House Conference on Aging

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PART ONE: FACILITIES, PROGRAMS, AND SERVICES

I. INTRODUCTION—THE NEED

Facilities, programs, and services constitute the machinery whereby public policies and social plans are developed and realized. Other background papers for this White House Conference deal with the specific needs¹ of the elderly and constitute the four general objectives of this conference concerning human needs of the aging: gainful employment, income, housing, and satisfaction in the later years of life.

The Conference itself will ascertain what the policy goals for America should be in each area: Is employment to be an optional choice for those seeking to work, or is the aim to be employment for all who are not handicapped regardless of age? At what level shall minimum retirement incomes be set, and shall these minima be reached by public, special purpose, or general purpose taxation? Is it the goal of housing to provide independent housing for all elderly, and by what financial and construction means? How far should services be extended to help persons continue to live in their own homes, despite illness and enfeeblement?

The Policy Statement of the 1961 White House Conference Act, repeated in the 1971 Act, sets forth these general objectives:

- (1) Assuring middle-aged and older persons equal opportunity with others to engage in gainful employment which they are capable of performing, thereby gaining for our economy the benefits of their skills, experience, and productive capacities.
- (2) Enabling retired persons to enjoy incomes sufficient for health and for participation in family and community life as self-respecting citizens.
- (3) Providing housing suited to the needs of older persons and at prices they can afford to pay.
- (4) Assisting middle-aged and older persons to make the preparation, develop skills and interests, and find social contacts which will make the gift of added years of life a period of reward and satisfaction and will avoid unnecessary social costs of premature deterioration and disability.
- (5) Stepping up research designed to relieve old age of its burdens of sickness, mental breakdown, and social ostracism.

These objectives constitute the basic benchmarks against which the facilities, programs, and services developed since 1961 can be evaluated. When needs have been identified and when goals for policy have been expressed, then facilities, programs, and services become the operating extension of the decision to meet certain needs. These facilities, programs, and services constitute the "how" for achieving the "what" which has been decided upon. They are the machinery whereby social programs and social policies are carried out.

¹Health, Income, Housing, Employment and Retirement, Education, Transportation, Nutrition, Retirement, Roles and Activities, and Spiritual Needs.

Facilities are those physical properties which are required for specified purposes (homes, community centers, nursing homes, etc.). Programs are those arrangements of persons and employees necessary to perform certain functions, either in special-purpose, physical facilities, or elsewhere; programs deal largely with issues of manpower allocation and training. Services are the end products which are delivered to consumers through facilities and programs.

Adequate understanding about the relationship between programs and services and public policy is often limited by two deficiencies. Social goals or policies are frequently enunciated in broad and sweeping terms about a desirable state of affairs, without attention to the requisite machinery necessary to produce this desired state. Conversely, those concerned with facilities and services are frequently preoccupied with securing support for specific activities but fail to make clear the social ends or purposes which such activity is intended to achieve. Especially troublesome is the tendency to lose sight of client-consumer wants in their most basic form while trying to secure financial support for specific needs identified as important by legislative or professional opinion.

II. LONG-RANGE GOALS

The facilities, programs, and services are a vital link in the chain which connects an undesirable present state of affairs with an improved and publicly desired state of affairs in the future. In this sense, it is possible to consider what goals are necessary to guide the development of the facilities, programs, and services—in order to achieve larger public purposes. Public policies, to be effective, require either a mechanism to deliver specified services to users or a mechanism with which to reallocate funds and resources among a constituency population.

For example, the Social Security Act of 1935 established a general goal of providing economic security for retired persons. A mechanism was established to assure this end which consisted of steps to accumulate resources from employees and employers (and also added later some amount from general tax revenues). A mechanism for redistributing income to persons in retirement through offices, administrative regulations, and the like was established as well.

The Congress has also enunciated general goals for enriching or enhancing the later years of existence through the language of the Older Americans Act and authorization for the White House Conference on Aging. These goals can be paraphrased as: to assist middle-aged and older persons to make the preparation, develop skills and interests, and find social contacts which will make the gift of added years of life appear to be a reward and satisfaction. The first definition of the social goal in retirement concerns enrichment of the later years: the transition from work to retirement and the opportunity to live a constructive and rewarding life in retirement. In order to achieve such goals, certain machinery actions have been taken. The Administration on Aging, in collaboration with local public authorities and voluntary organizations has established community centers and has contributed to staff salaries for these centers so as to provide a variety of recreation and other leisure-time activities. The Administration has also contracted with other Federal agencies to provide funds for the employment of older persons in their local programs, in order that older persons can participate in the delivery of local services. It has also encouraged the restructuring of adult education programs in order to broaden the conception of preparation for retirement. These efforts supplement the major activities of other public and voluntary agencies which are directed to similar ends.

Certain guidelines become especially important for the development of facilities, programs, and services in view of this larger context. These guidelines can be treated independently of the underlying social purposes which such mechanisms are designed to achieve. For example:

- (1) Facilities and services should be accessible to consumers by physical location in centers of population or, if not possible, then made accessible to users by the provision of transportation facilities which link the residence of consumers with the program.
- (2) Programs and services should be readily available. Administrative regulations and procedures, hours of opening and closing, and staff behavior in confronting the consuming population should be organized and directed so that legally authorized services and programs are in fact easy to use by those intended.

(3) Programs and services should be responsive to user needs and wishes. A proper and flexible balance needs to be struck between the perceptions of professional experts concerning consumer needs and the perceptions of consumers about their own needs.

(4) Resources in the form of manpower and budget must bear some effective relationship to the scope of a public goal for which the programs are intended.

Once the substance of a program has been identified, then the machinery criteria can be treated as: accessibility, availability, responsiveness, and resource adequacy.

The summary analysis which follows concentrates upon the present state of the organizational machinery created to satisfy certain substantive needs of the elderly:

(1) Health facilities, programs, and services including those for physical and mental health, nutrition, and extended personal care.

(2) Arrangements for living, including housing, other services delivered to the individual's home, and protected care.

(3) Opportunity to fill satisfying roles in society—including employment, retirement provision, and opportunity to perform satisfying community functions.

(4) Income provision.

III. KNOWLEDGE AVAILABLE

A. CONCEPTS AND DEFINITIONS

Certain professional categories of staff have proven necessary for the effective functioning of many different programs. Of these, attorneys, physicians, nurses, the clergy, and teachers are dealt with in other background papers.² The social services staff requires some additional attention.

In any consideration of planning for the elderly, the term "social services" presents certain complications. For some, such services represent an independent human need and thus warrant consideration on an equal footing with other needs identified for the Conference (such as nutrition and health). For others, the term refers primarily to a staff function comparable to that performed by doctors, nurses, and teachers, and thus should be considered in relation to the end purpose of a program. Since the Conference has not identified social services as a need on the same level as nutrition, health, housing, this paper uses the term in its staff and professional sense.

The social services consist of two main categories of staff effort:

(1) A counseling function necessary to assist troubled or confused individuals to work out appropriate courses of action based upon their own efforts. In this sense, the counseling function is supported and aimed at assisting individuals to resolve their own personal needs. This function is shared by social workers with psychologists, psychiatrists, vocational counselors, and the like.

(2) In another sense, the social services involve a variety of functions necessary for the appropriate delivery and consumption of other services, such as health and housing. In this sense, social workers are a necessary part of the personnel complement of any basic needs-meeting program to assure that the human and social dimensions of the need are appropriately met by each program. The complex variety of specialized programs requires a method whereby each program is linked to all the rest. Social workers frequently fulfill this function by serving as the outreach arm of a host agency (a hospital, housing authority, relief agency). They identify agency clientele needs, locate other community resources, and try to bring client and resource together by referral, persuasion, and other linking methods.

Another example is the extent to which delivery of medical or nursing services depends upon an understanding of family conditions, psychological reactions, personal behaviors, and cultural determinants. The way in which health services are used and sought by consumers is influenced by such nonmedical factors. Attention to these elements is frequently assigned to social workers and becomes the social service component of medical care.

Similarly, low-income housing programs require more than the simple selection of tenants and the collection of rents. Differences in cultural

²See the Background Papers on "Physical and Mental Health," on "Education," on "Legal Services," and on "Spiritual Well-Being," 1971 White House Conference on Aging.

background, education, and economic status govern the housing requirements of varying populations, and these affect the way in which the subpopulations utilize housing. Interfamilial difficulties, economic stress and insecurity, unexpected health hazards, and problems in relationships between children and parents arise frequently.

Where housing is provided under public auspices, the impact of these concerns cannot be wholly ignored by housing management. Attention to these social phenomena is frequently the responsibility of the social workers employed in housing programs.

The provision of income supplements or the introduction of employment training opportunities are both influenced by variations in the requirements which families present. Incentives to utilize employment retraining depend not only upon economic incentive, but also upon psychological attitude and the relationships between members of the family, neighbors, and friends. These behavioral and social and psychological considerations in training programs become a responsibility of a social worker or a similarly trained counselor.

Taken in this latter sense, the social services may be said to be essential for the operation of many facilities, for the development of many programs, and for the delivery of many services—necessary, that is, if human differences, social relationships, and cultural differences are accepted as important determinants in human adjustment. The "social services" thus are not an umbrella term covering all of health, education, and welfare, but are essential to all delivery components—comparable to the physician and the nurse in the delivery of health services, or to the teacher and trainer in the delivery of educational services.

This is the sense in which this paper views social services, and explains why they have not been defined as an independent "service." Rather, they are vital elements in all services for the aged.

It is possible that the term could be given still another meaning—one covering all actions necessary to provide substitute social care for persons, regardless of age, who cannot be wholly self-reliant because of physical, mental, or emotional condition. Such a definition would cover a wide range of services to assure community and nonhospital living. It could include the management of: home help programs, housing supplements, half-way houses, day centers, training centers, residential institutions, and the like. The beneficiaries would be: the handicapped, aged, mentally handicapped, mentally confused, addicted, and children without families. Such a definition has not yet emerged in the United States, although one strand of practice has begun to take on this coloration in England.

B. CURRENT SERVICE PROVISION

1. Income³

The aged as a group have low incomes. One-third have incomes which place them below the poverty level, and their average income is less than half that of younger persons. The aged over 75 years have incomes only two-thirds that of all aged persons.

To meet this situation, the Federal OASDHI Program has regularly increased its benefits by legislative act and as a result of increases in earnings of workers. However, these increases have not overcome the income deficiency with which most retired persons must live. No provision is currently made for automatic benefit adjustments to meet increases in the general price level. In 1968, the average monthly benefit paid a retired worker and his wife was \$166.30. For all workers receiving awards in 1968, 65 percent received benefit awards under \$100 a month, and only 7 percent received \$150 a month or more; 45 percent of male workers received \$100 a month, and 16 percent received \$150 or more.

The monthly average income of two million Old Age Assistance recipients from all

³See Background Paper on "Income," 1971 White House Conference on Aging, for additional information.

sources was \$90 a month in 1965, about two-thirds of this amount coming from public assistance funds. This average conceals gross variations in income in the various states: it ranges from a low of \$46 a month in West Virginia to a high of \$145 in California. Eighteen percent of Old Age Assistance recipients have a monthly gap between the "emergency levels of need," set by State welfare programs, and their total income from all sources. This gap is explained by various public assistance policies: delay in adjusting welfare payments to the upward rise in prices, rent and utility allowances at less than actual cost, imposition of arbitrary ceilings on welfare payments below budget requirements, and other devices to reduce the level of State and local welfare payments.

On an average basis, all aged recipients of Old Age Assistance have less total income than their minimum emergency requirements for rent, food, fuel, and clothing.

2. Health

Health goals for the elderly do not differ significantly from goals of any age population. They call for: prevention of disability and illness where possible; access to services for treatment and rehabilitation, unimpeded by economic barriers; the delivery of care in each citizen's natural environment; the provision of high quality extended care through skilled nursing or home care where necessary; assurance of an adequate diet for all, regardless of physical status or income.

Mechanisms for achieving such broad goals are either:

- (1) the provision of specialized health programs and activities directed solely to the elderly, or
- (2) special steps to assure that general purpose health services give full and adequate attention to the needs of the elderly in comparison with the needs of children and of other adults.

The prevention of illness specifically among the elderly is difficult to provide, mainly because the major health hazards among the elderly have their likely causal origin very early in the individual's life history so that primary preventive intervention cannot begin in old age. It is also true that causal explanations are often lacking for many long term illnesses which beset the elderly so that preventive intervention cannot be planned accurately in earlier life.

In light of those obstacles, the major preventive health measures in old age are the provision of adequate income to assure adequate nutrition and access to regular medical examination. The general mechanism for income provision has been discussed. It falls far short of the goals set, primarily in the inadequacy of resources provided.

Programs to counter this deficiency in income provision and to assure access by the elderly to physicians have been greatly enlarged through Medicare and Medicaid. These programs are also imperfect at a number of definable points. Payments for medical care for the aged from all public programs rose from \$5,647,000,000 in 1967 to \$9,726,000,000 in 1969. More than 50 percent of all public payments were made on behalf of the elderly. But 65 percent of the increased cost for physician services is accounted for by increases in the price of physician services, while only 11 percent reflects an increase in the size of the United States population. Therefore, only about 25 percent of the increased payment for physicians may be attributed to increased utilization of physician services.

The present program, therefore, has not increased the volume of services nearly as much as the expenditure rate leads one to believe. The public program expenditure pattern is also heavily weighted in the direction of institutional care as against health care in the patient's home. If physician payments are excluded, public per capita expenditures for hospital and nursing home care increased 250 percent between 1966 and 1969 while per capita expenditures of other health services for the aged increased only 40 percent.

Per capita hospital care expenditures for the aged were four times those for the aged under 65, and per capita physician expenditures for the elderly were only twice that for the younger group.

The medical assistance program of public assistance pays 80 percent of all vendor payments on behalf of the aged to nursing homes and hospitals and almost 60 percent of professional health services outside of an institution (an additional 10 percent is paid for drugs, etc.).

Other programmatic defects can be noted:

(1) Limitations on Medicare and Medicaid payments and on eligibility have borne little relationship to health needs. A very confused situation has resulted which requires a topheavy administrative staff to control and direct payments. There exists no reasonable relationship between Medicare entitlement, eligibility for Medicaid or for other public assistance for health services, private supplemental insurance coverage, and other public medical services through hospital clinics or community health centers. These programs do not directly supplement nor do they complement each other. Medical care may be started and terminated or shifted without any necessary relationship to an individual's basic health requirements. Twenty-five percent of nursing home patients, according to one survey, exhausted their benefits before their medical condition improved sufficiently for them to return to their own homes.

(2) Mental health needs of the aged are seriously neglected due partly to shortages in mental health personnel and partly to inadequate resource provisions. Treatment at home is seriously underprovided while institutional facilities are overprovided. Within the provision for institutions, there has been a growing tendency to shift the burden of care to proprietary nursing homes, with little or no psychiatric services or psychiatric supervision, and to reduce the role of psychiatric hospitals in treating the aged.

In 1967, the aged constituted only 9.5 percent of the population, but they represented 30 percent of the patients in mental hospitals. Fifty-five percent of all patients in nursing homes (predominantly proprietary) are estimated to suffer from some mental impairment. In community mental centers, only 3 percent of patients receiving outpatient care are over 65, while 7.5 percent of those receiving twenty-four-hour care in an institution operated by the center are over 65.

(3) At a subjective level, physicians are widely believed to treat the health complaints of the elderly in a perfunctory fashion, influenced by a conviction that very little can be done for them. No effective means for counteracting this situation, if it exists, has been initiated.

(4) The aged in rural areas and the aged of racial minorities in cities are underserved and do not have health services readily available except through large, often distant, outpatient clinics of hospitals. For them, the defects noted above are accentuated by the general inadequacy in health services provision for minorities and for rural dwellers.

Special hospital provision for the elderly has not developed substantially, since prime reliance has been placed on general hospitals serving all age categories. The introduction of Medicare has removed financial barriers, but has in turn introduced a strain on the use of available hospital facilities. This pressure existed before the enactment of Medicare, since the elderly constituted 15 percent of current hospital admissions and formerly used 25 percent of

all hospital days' care. The projected increase in utilization was expected to be only five percent in the total of hospital days' care provided.

The more significant difficulty lies in the lack of relationship between prehospital, hospital, and posthospital care, as it is now mediated by a personal physician's interest. If an aged patient has a physician, there is no program which continuously links these phases of medical care. Ambulatory health services maintained by hospitals are hampered by personnel uncertainties due in large part to the traditional autonomy of physicians in relation to the hospitals where they practice. The small handful of experimental geriatric services in general hospitals has not yet led to any extensive special provision for the elderly.

Hospitals have not been able as yet to develop professional and administrative means for closing the gap between hospital and nursing home (or extended care facility). Utilization review committees are based on reducing the use of hospital beds and are governed by physicians with a primary need for those beds. The process is not linked to the development of out-of-hospital services, adequate for the needs of patients to be discharged earlier than usual.

Extended care facilities and skilled nursing homes now provide almost one million beds, increasing by 300 beds a day during the past two years. This increase has been due primarily to the proliferation of proprietary and commercial facilities. The functions performed by these facilities have been subject to enormous pressure for change in recent years. As hospital costs have risen, and the pressure for more careful use of hospitals has increased, alternate facilities have been sought for the early discharge of hospital patients. This development has led to a demand that the standards of care in intermediate facilities be raised, which in turn has increased both the cost and the complexity of staffing such facilities. Public financing has grown but still lags behind these pressures.

One-sixth of all public payments for medical care for the aged are paid to nursing homes and extended care facilities; 76 percent of such care is financed by public payments. Despite this increase, many such institutions provide the barest minimum of custodial care. Many have only a licensed practical nurse in charge of 200 or 300 patients during the afternoon and night hours. In 1968, there was a shortage of 25,000 workers for these homes; 80 percent of the listed vacancies were unfilled for over one month. Turnover in staff is twice as high as that in manufacturing industries.

Meanwhile, a survey of 400 FHA-financed nursing homes reveals that the ratio of staff to patients has continued to rise and now averages 9 staff for each 10 patients. Rising State and Federal standards for licensing are expected to increase the pressure in this direction despite the already serious staff shortages. But in spite of this increasingly favorable ratio, relatively few nursing homes provide physical or occupational therapy, rehabilitation, social services, or diversional activities of any kind. Improvement in standards of care is hampered by lack of suitable manpower at all levels and by the sharply rising costs of manpower. Minimal and subminimal standards are the rule rather than the exception.

No standard exists governing the optimum use of nursing homes. But the strain under which hospitals have been operating has led to a heavy dependence upon nursing homes as the next stage of posthospital care. This dependence has been accentuated by a failure to develop care services for delivery to the aged in their own homes.

Community care programs are intended to make it possible for the elderly to remain in their own homes despite illness and disability which does not require hospital care. Such programs are also intended to reduce excessive reliance upon institutional care. These programs have suffered by comparison with the growth of, and expenditure for, hospitals and nursing homes.

It is estimated that there are only 2500 home health programs in the United States. Their service volume has increased only slightly with the advent of Medicare and Medicaid. Only one-third offer any service beyond home nursing, and most of this nursing is short term and intermittent. In general, there exists no community-wide comprehensive program for home health assistance to the elderly. Home help other than nursing has not expanded

significantly, although home nursing services have allocated their resources to assure more care of the elderly.

The Medicare program expenditures have favored institutional and private physician services, partly because of the program focus and partly because of the higher costs of hospital care. Although the number of bills paid for home health services increased markedly between 1967 and 1969, the proportion of Medicare payments for such services remains insignificant—1.2 percent of payments under the supplementary insurance feature and only 0.5 of all Medicare payments.

Old Age Assistance is equally unbalanced in its medical care provision. In 1969, 69 percent of all vendor payments for medical care went to nursing homes and only 1.3 percent for all other forms of noninstitutional health service. Physicians' fees accounted for 4 percent, and drugs 15 percent.

3. Nutrition

Good nutrition for health is primarily a matter of income sufficient to assure a basic minimum food supply, although nutritional education is also useful. Two major supplementary programs have been introduced in recent years. One includes the various programs for the delivery of hot meals to the elderly at home. These, however, have remained at a purely demonstration and experimental level despite efforts of the Administration on Aging to increase funds for this purpose. There are only 23 such programs funded by the AoA, serving 18,000 hot meals each week. None of them provides more than one meal a day for a part of the week. These numbers must be seen against the two million elderly who are eligible for public assistance, but who are not receiving it.

Food stamp and surplus food programs as well are available for persons of low income. But their use by the aged is limited because travel to a central resource is required. Travel is difficult for the elderly, many of whom add physical enfeeblement to their limited incomes.

4. Living Arrangements⁴

Major social provisions for the living needs of the elderly, aside from income, are varied. Programs and services concerned with the normal living requirements of average older persons are not limited to housing alone. Suitable living arrangements for the aged call for: choice in housing to fit diverse personal wants at a price within the means of the aged; access to services to maintain housing; services to sustain independent home living despite increasing enfeeblement or intermittent illness; and ready access to friends, commercial and public services, recreation, and the like.

While various services have developed to meet such needs, their volume is so limited and distribution is so uneven that the lacks are much greater than the achievements.⁵ About 72 percent of all men and 44 percent of women over 65 live in family situations of which they are the head; 14 percent of men and 31 percent of women live alone; and 3.5 percent of men and 4.5 percent of women live in institutions. But an estimated 50 percent of older individuals live in housing which is either dilapidated, too large to care for, or too expensive for their income level. For two million aged relief recipients (46 percent of whom have earned retirement benefits which are too small to live on), 36 percent report some major housing deficiency: 16 percent have no inside running water, and about one-fourth, outside of the South, lack adequate winter heating.

Between 1956 and 1969, 326,000 special housing units for the aged were constructed or restored under public programs for approximately 408,000 persons. Low-rental public housing supplied 234,000 of these units, while the FHA direct loan program accounted for

⁴See also Background Paper on "Housing," 1971 White House Conference on Aging.

⁵The data which follow are from Brotman, 1970; Eppley, 1969; Social and Rehabilitation Services, 1967.

46,000. Measuring the adequacy of this public facility supply is difficult because no policy has been adopted choosing between construction of specialized housing for the elderly or improvement of the general low-cost housing market. The program for low-income rent supplements was designed to provide an alternative to public housing construction. But as of 1969 such supplements for the aged were granted for only 2700 housing units and were planned for an additional 2700.

The widespread increase in rental cost and the failure of the commercial housing construction market to meet the needs of low-income families anywhere leads to the conclusion that the elderly are in double jeopardy, lacking both income and physical resources for effective competition in securing scarce low-income housing.

In place of the construction of new housing, some attention has been given to supplementary home help programs to assist older persons to remain in their own homes despite changes in income and physical status. However, there has been no widespread conviction that such supplementary home help programs are a significant part of modern social provision for the aged. Such provision as exists has not been articulated effectively with other forms of care so that little relationship can be identified between home help programs for the well, home health services for the sick, and care in intermediate institutions such as nursing homes and homes for the aged.

About one-fourth of all older persons (whether they live alone, with relatives, or with others) are limited in their major activity. This totals between four and five million older persons. To meet their needs, the Administration on Aging supports 447 projects—excluding health services—which reach some 130,000 persons at most. Nearly three-fourths of this total represents friendly visiting and reassurance services; only 9500 persons receive concrete home help services. A sample study of two million Old Age Assistance recipients (Gray, 1969) reveals that, in 1965, 85 percent received no services of any kind—other than a relief check. Four percent, or 80,000 elderly, received some service to help them maintain their own homes.

Recipients of Old Age Assistance live under twice the risk of having to go to an institution rather than being in their own homes. When compared with the average population over 65 years of age, 8.7 percent of relief recipients live in institutions in comparison with a national aged average of 4.4 percent, although the proportions of individuals in the two groups with major disability do not differ materially.

5. Roles of the Aged

It is customary to think of recreational provision for the elderly or preparation for retirement as a means with which to fill a vacuum that is opened up by retirement. It is more useful to ask what shall be the role of the elderly in society. This is an umbrella concept which covers: preparations for retirement, changes in midcareer opportunities, opportunity to make contribution to the life of society through services, the continuation of customary employment, the entry into new employment opportunities, as well as the elaboration of adult education and recreational opportunities.

Until recently, most organized attention to this question has been given to the development of leisure time opportunities. Senior centers, clubs, and senior activities have been widely promoted. Approximately 1500 such centers with a formal organizational structure exist in the United States. Firm data are lacking about the number of persons utilizing these centers, but a recent report (Anderson, 1969) indicates that approximately one-third of the potential membership which the centers are prepared to serve do, in fact, use such centers. However, their use can range from almost daily visits by some persons to a once-a-year attendance at a mass meeting. Such centers do seem to reach the lonely especially well, perhaps 50 percent of the users being elderly persons living alone. However, men, members of minority groups, and the disabled are reached in only a small percentage of cases.

Recreational activities constitute the most extensive function of such centers, although 38 percent of them provide some combination of recreation, individual, and community

services. The scope of such recreation programs may be inferred from the very modest financial resources which the average center can mobilize. Over 40 percent of all the centers reporting have total annual budgets of less than \$15,000 per annum, and only 8 percent have incomes over \$50,000 per annum.

Aside from these senior centers, there are no good data about the use of general purpose recreation facilities by the aged, although it can be assumed that more of the elderly use them than use facilities designed solely for the use of the aged. However, low income and poor transportation constitute major obstacles. One-third of the elderly poor and one-fifth of the elderly near-poor also have serious transportation problems.

6. Transportation

Efforts to overcome transportation obstacles have been miniscule, tentative, and experimental. The most extensive involve reduced fares on public transportation systems at off-peak hours. Since public transportation has not kept pace with either the spread of cities or the increase in population, such programs hardly touch the basic mobility requirements of an older population. Efforts by the Administration on Aging to stimulate attention to this subject have led to 300 experiments which reach some 75,000 persons. One well-publicized experiment in Chicago succeeded in providing an average of six trips a year for 1600 persons to visit health centers or welfare agencies, to shop, or to go on social outings—an average of once every two months.

7. Employment

The continuation in employment has been widely urged as a substitute for arbitrary retirement at age 65. However, labor force participation for the aged has fallen perceptibly, from 63 percent for males in 1900 to 27 percent in 1966. Participation has been more stable for women, being 8.3 percent in 1900 and 9.6 percent 1966, although this last represents a decline of over 10 percent in 1960. The declining trend has continued since the 1961 White House Conference on Aging, despite much urging to the contrary.

Virtually all studies indicate that continuation of employment is desired most by older persons in two circumstances:

- (1) Where the adult career has offered full freedom for a person's development as in some of the professions or some of the self-employed.
- (2) In those instances when income at retirement is so low that continued employment is preferable to retirement on a reduced standard of living.

Whatever the desire of older persons may be, the opportunities in the labor force for continued employment are uneven at best.⁶ Taken overall, it is apparent that, while some individuals may continue their employment until physically incapable of doing so, there are relatively few opportunities for continued employment on the part of the low-income working population. Routine jobs, which require minimum education, have declined rapidly. The aged are at a disadvantage educationally. For example, 26 percent of the aged men have only a primary school education, while 36 percent of those aged 25-64 have college education.

Despite these factors, several service programs have sought to enhance employment opportunity. A number of demonstration programs have sought to offset enforced retirement by selective placement of older individuals in specially solicited positions. There are only a handful of such programs concentrating entirely on the employment of the elderly, or on their retraining for new positions. The Administration on Aging funds 205 such projects which have

⁶ See Background Papers on "Employment" and "Retirement," 1971 White House Conference on Aging.

reached and referred 15,000 elderly to work. The vocational rehabilitation services have concentrated most of their efforts on behalf of adult workers under the age of 65. Of 241,000 handicapped workers rehabilitated in 1969, only 25 percent were 45 years or older, the overwhelming majority of these being under 55. The Office of Education programs for manpower development are presumably designed for the entire population, but only 10 percent of all their enrollment is for persons 45 years of age or older. The special programs of the Department of Labor are similarly geared to middle-aged adults.

The long term trend data of the Social Security Administration indicate a drift towards earlier retirement. These data are reinforced by a recent study reported by the University of Oregon, covering 73 corporations and 2000 early retirees (Greene *et al.*, 1969). Wherever companies offered an early retirement option, 50 percent of the employees chose to exercise this option. Of these, 86 percent were satisfied or would have retired even earlier if they had the opportunity again. The reasons for early retirement are obscured by the health and income status of the persons retiring.

The limited development of special programs to assist older persons to continue employment may be a reflection of the many uncertainties surrounding the real opportunities, but the wishes of the elderly clearly play a significant role. However, the routine of retirement at a fixed age is still the situation confronting most employed workers. No general institutional mechanism has yet been developed to moderate the impact of a routine retirement, as compared with an individually tailored retirement plan. As a result, experimental employment efforts have been primarily concerned with helping individuals find substitute or postretirement employment rather than continue in their familiar employment careers.

8. Preretirement Counseling

Preretirement counseling has been introduced in many industries but, in one study of 75 firms, 60 percent of the early retirees were not effectively aware that such programs were available (Greene *et al.*, 1969). The existence of these programs does not, on the average, affect the worker's satisfaction or dissatisfaction with his retirement, although individuals may benefit. To a large extent, these programs are concerned with assisting persons approaching retirement to accept the reality of their retirement. Much of the actual content of the counseling is concerned with matters of income, taxation, housing, and the like. Efforts to introduce wider dimensions of adult education as a doorway to a new life in retirement have not been noticeably successful as a part of the retirement counseling in itself. Employees often consider such programs as a subtle management device to stimulate retirement, and some industries have discontinued these services on this account.

There is no record of preretirement counseling based upon the principle of lifetime education and career education. In such a concept, counseling would be introduced in the middle of adult careers and would permit individuals the option of selecting alternate career changes at their peak employment years rather than awaiting their terminal years.

9. Voluntary Service

It is estimated that 330,000 persons are employed in positions primarily serving older persons (other than in the health field). A future demand is predicted for between 8,000 and 13,000 management staff for retirement housing projects; for 23,000 to 31,000 persons for staffing recreation programs; for 800 State planning and coordinating staff. It remains to be seen whether these opportunities generate new services to recruit, train, and place adult and older workers in the services for the aging specifically.

While many older persons continue to be engaged in community activities, evidence to date suggests that this is still limited to those who have previously been engaged with such activities during their adult years. Community service by the aged has not yet grown to the stage that it provides a major role which the elderly can choose to fill if they wish. The

opportunity has been limited predominantly to persons with higher education, higher incomes, and more influential positions in community affairs.

Small demonstration programs have indicated that the elderly can be constructively engaged in community services. Experiments conducted in New York City and in Project FIND have demonstrated that older persons can be recruited and can significantly contribute to the community by helping to introduce Medicare, by providing volunteer services in institutions for retarded children, and so on.

Two hundred programs of Senior Opportunities in Service, in 45 States, affect some 670,000 older persons. The Administration on Aging funds 625 projects which give major volunteer opportunities to 41,000 elderly persons. Sixty-eight Foster Grandparent projects placed 4000 older persons in positions to help 16,000 children a year. Project Green Thumb provides work for 3000 low-income elderly in rural areas.

Although these examples are impressive, they do not yet constitute a socially-created new role for the aged. Evidence is lacking about the extent to which the aged strongly seek new roles, although reports about loneliness and about depression in retirement are prevalent. The suicide rate among aged males may also be suggestive. The rate rises steadily from nine per 100,000 at ages 15-24 to 59 per 100,000 at age 85.

10. Senior Citizens in Policy Roles

Senior citizens do not yet dominate or control the very programs and services developed for their use. Older persons individually may serve on boards of trustees and in policy-making positions, but they are seldom in policy-decisive roles. Senior centers, following the tradition of other community centers, have encouraged such participation most widely. But in over half of the community centers studied, fewer than nine percent of all participants assume any responsibility for the conduct of center activities. Even where such policy participation is encouraged, the average center is likely to have only five older persons serving on a board of directors or 10 persons conducting any kind of program activity. In comparison, 24 persons are limited to offering suggestions, and another 11 percent may help with clerical tasks. It would appear that opportunities for community services are limited to relatively routine and less significant activities which are not perceived as central to the life either of the institution, the program, or the facility.

IV. THE PRESENT SITUATION

The present situation makes it clear that a substantial gap still exists between the organized facilities, programs, and services, and between the announced aims of social policy for the elderly.

This summary of the current situation permits one to examine service and program adequacy in the policy areas of income, health, living arrangements, enrichment of life, and employment. The service criteria used are: accessibility, availability, responsiveness, and resource adequacy. The above discussion indicates:

- (1) Opportunities for gainful employment have not been developed. Evidence is accumulating that such a goal corresponds to the wishes of the elderly themselves only in special circumstances and may not serve as a universal goal.
- (2) Income is clearly insufficient for a high proportion of the aged either to maintain health or to participate in community life in a dignified manner.
- (3) Housing is not widely available that is both suitable for the needs of the aged and within the reach of their average incomes.
- (4) Services which assist the aged to maintain their own homes are grossly underdeveloped in contrast to programs which institutionalize the aged.
- (5) The opportunities to fill rewarding social roles are still determined by individual circumstances under conditions of reduced opportunity. Programs which demonstrate the value which the aged can bring to community life reach a miniscule proportion of the aged and do not yet constitute a change in opportunity.
- (6) The elderly do not play significant roles in the planning or running of their own services.
- (7) Health services have improved most significantly but largely by shifts in the cost of health services and by increasing the volume of nursing facilities. Limited attention has been given to nonphysician services necessary in the pre- and post-hospital phases of illness, if the aged sick are to secure early treatment and are to sustain their own homes. Mental health, home help services, and rehabilitation in institutions are ill-provided for the aged. Systematic attention is still lacking to the link between physician and hospital service in the acute stage of illness and to the essential paramedical, social, and out-of-hospital services which follow. Continuity in medical care is frustrated by the confusion which prevails between the eligibility, service, and financing provisions of independent health programs.

Lacking national data, it is difficult to be certain whether the gaps described above are due to errors in the estimates of need, errors in the accumulation of data about service utilization, or to errors in policy itself.

Although the cost of health services increases with age, the quality of attention for the needs of the elderly appears to decrease with age. The very, very aged may consume a

disproportionate share of health services, but a disproportionate share is also provided in less than first quality institutional facilities. The pervasive attitude towards the very elderly in all institutions and in community care programs is that little can be done for them and, therefore, little specialized attention need be given them. Maintenance of housing becomes more difficult with age, and access to community centers declines with age.

The match between programs and facilities on the one hand, and the needs of ethnic minorities on the other, is also out of balance. By and large, the elderly among ethnic minorities have less access to specialized housing, less access to specialized medical care, and less access to comprehensive community services or leisure time programs.

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PART TWO: CONSUMER AND LEGAL SERVICES

A. CONSUMER SERVICES

I. THE NEEDS OF THE ELDERLY CONSUMER

President Nixon (1971) in a message to Congress on February 24, 1971, expressed the need for consumer protection measures in these terms:

In today's marketplace...the consumer often finds himself confronted with what seems an impenetrable complexity in many of our consumer goods, in the advertising claims that surround them, the merchandizing methods that purvey them and the means available to conceal their quality. The result is a degree of confusion that often confounds the unwary, and too easily can be made to favor the unscrupulous. I believe new safeguards are needed, both to protect the consumer and to reward the responsible businessman (p. S. 1880).

While all consumers face the problems described by President Nixon, the elderly are particularly affected by them. At the University of Michigan's National Conference on Aging, in 1969, the consumer problems of the aging were highlighted by several speakers. One of them was Mrs. Virginia H. Knauer (1969), then Special Assistant to the President for Consumer Affairs and now also Director of the Office of Consumer Affairs. Noting that the Nation's 20 million older people represent a consumer market with a total spending potential of over \$45 billion, Mrs. Knauer asserted that this market is being ignored. She said:

The older consumer is ignored in regard to his special needs and desires, his particular medical and monetary problems, his housing, his food.

Specific examples of such neglect cited by Mrs. Knauer included:

...The design of housing—with steep steps, narrow doors and other features that create hazards and hardships for the handicapped, including infirm older people.

...Clothing such as "dresses with zippers up the back or blouses and shirts with tiny buttons [which] can prove frustrating or impossible to someone struggling with arthritis or failing eyesight."

...Food sold in the family-oriented supermarket where fresh fruits and vegetables are pre-packaged in large amounts and where frozen and other packaged foods are often available only in large sizes.

...Labels on garments as well as on food products which are printed in such fine type that older people, with their failing eyesight, cannot read them.

"Studies have shown that senior citizens are becoming a prime market of their own—like the newly recognized teenage market," said Mrs. Knauer. "Unfortunately, many businessmen are reluctant to actively solicit the trade of any other age group but youth. Back in 1967, Geneva Mathiesen of the National Council on the Aging reported that local store

managers, even when convinced that elderly consumers represented a considerable market, refused to channel any advertising or promotion efforts to attracting them for fear it would 'hurt their public image' . . . Imagine cutting off from consideration a market equal to the population of our 20 smallest States combined. It's like being willing to forego the purchase power of the entire State of Connecticut!" (Knauer, 1969).

While the aged are neglected by the legitimate market—in terms of not being offered the kinds, quantities, and quality of products they need—they are overly cultivated by the unscrupulous. This is how the problem was described by Mrs. Knauer:

Elderly widows, who never signed a contract before the deaths of their husbands, find themselves victims of home improvement swindlers—tied to unconscionable contracts they didn't understand and for so-called improvements they cannot afford.

Anxiety, fear, pride, ignorance of the elderly—all these play into the hands of the gyp artist, who is ready to provide the illusion of security or assistance—for a fee. From make-money-at-home schemes like overpriced "knitting machines" to retirement land deals, from promises of medical miracles to "bargains" on luxury items which usually lead to a frightening cul de sac of 'low monthly payments', these swindlers will pick clean a retiree's security and then fly off to greener victims.

How do they manage, year after year, to get away with these vicious practices? Mainly because most people are not trained to recognize frauds and fraudulent schemes, and many victims are reluctant to talk about how they were taken in. If only they would avail themselves of the legal remedies available in their local district attorney's office or State attorney general's department.

Some cannot believe that the charming, thoughtful young man who came over each week to spend some time with them in their loneliness could possibly have cheated them so thoroughly. Others are embarrassed or ashamed to admit that they were so easily tricked. Many do not even realize that they have been victimized. But those who find their homes ripped out from under them, or their possessions put up for sheriff's sale, are all too aware of what has happened to them (Knauer, 1969).

This problem was further detailed by Sidney Margolius, (1969) speaking at the same Conference. He said:

Apparently it is not enough that the present generation of older people lived through wars and depressions, built this country's present wealth, and now have to try to live on an average retirement income of less than \$2500 a year. But they are also subjected to some of the most cynical exploitations and commercial indignities you'd care to see, including high-priced drugs, overpriced hearing aids and eyeglasses, patent medicines that not only are sold at exorbitant prices but play on older people's fears and often are worthless; the commercially-operated nursing homes and corporation-owned hospitals that have sprung up to take advantage of Medicare; loop-hole ridden health insurance plans sold to supplement Medicare; and other overcharges and deceptions large and small.

I am not just talking about the obvious swindlers who peddle worthless patent medicines, health foods, and health machines, fake chimneys, house siding, and furnaces. I am also talking about many "respectable" manufacturers including

some of the best-known names in American industry, who sell health insurance that excludes the very illnesses for which it is most needed, brand name medicines that may cost 10 cents to produce but cost the consumer \$4 to \$6 to buy, and hearing aids that cost the older person \$300-400 to buy but only about \$50 to make. For every trusting, confused older person who is fleeced by hit and run salesmen, there must be a thousand who, everyday, pay more than really necessary for drugs, processed foods, eyeglasses, housing, and other urgent needs.

II. THE GOALS OF CONSUMER PROTECTION

In direct or indirect terms, goals pertaining to the protection of the elderly consumer have been included in the recommendations of the 1961 White House Conference on Aging, the Older Americans Act, hearings and reports of the U.S. Senate Special Committee on Aging (1969a, 1969b, 1970, 1971) and in the recommendations of numerous organizations.

The widespread concern about the economic conditions of the elderly includes a recognition that one of the important ways of improving their income status is to make sure that the elderly receive good value for each dollar they spend on goods and services.

Mrs. Knauer (1971) recently described consumer goals as the attainment of "a world where quality, justice, compassion and understanding are the key elements in the marketplace." Elaborating on this definition she said:

We do not have quality when there are consumers who find that their new products do not work. We do not have justice when there are so many merchants guilty of deception and unfair practices who get away with it. We do not have compassion when we find that the poor, the unsuspecting and the disadvantaged are prime targets for the cheat, or when products are made without regard to the safety of those who use the goods. And we do not have understanding when we find great gaps of communication between the seller and the buyer.

Implied, and sometimes specifically included in goal statements, is also the goal of preserving the integrity of the free enterprise system. President Nixon (1971) expressed this goal in his message to Congress on consumer problems. He said: "The continued success of our free enterprise system depends in large measure upon the mutual trust and goodwill of those who consume and those who produce and provide." (p. S. 1882).

III. KNOWLEDGE AVAILABLE

Although more research is needed—on the scope of the problem, the special needs of elderly consumers, and on the development of more effective consumer protection measures—full application of existing knowledge could go far toward alleviating the consumer problems of the elderly.

A. NATIONAL EFFORTS

Studies of consumer problems have made it clear that, while State and local consumer protection measures are needed, national action—both public and voluntary—is even more important. The reason for this is that, in today's economy, most goods and services are produced and distributed or delivered by large organizations. Rare indeed is the product—or even service—that is entirely subject to State or local influences.

Therefore, much that is known about consumer problems is reflected in President Nixon's Consumer Message of 1971. There is a considerable consensus among students of consumer needs on the problems the President identified although there are differing opinions about the effectiveness of the actions he proposed. The following analysis of pertinent parts of the proposals indicates the status of much of our current knowledge.

1. Product Testing

There is general consensus that consumers should be and can be assured of reliable information about the goods they buy. The President's proposal for providing this authorizes the Federal Government to determine what products and what characteristics of those products should be tested (Nixon, 1971, p. S. 1882). Manufacturers, laboratories, and other private organizations which are adequately equipped to perform the tests would be accredited by the Government. Suppliers could advertise that their products had passed the Government approved tests and there would be strong penalties for those who made such claims falsely. Some people feel that testing by the private sector of the economy would not be sufficiently objective and want tests conducted by a Government agency that would have nothing to gain or lose by the findings.

2. Warranties and Guarantees

It is also essential for the buyer to have reliable information about the terms under which he buys a product. The President's proposal would authorize the Federal Trade Commission to require certain safeguards such as the full disclosure of the terms of warranties and guarantees in language that the consumer can easily understand (Nixon, 1971, p. S. 1881).

3. Product Safety

Present Federal food and drug and other legislation designed to protect the consumer from unsafe products leave many items uncovered. To correct this situation, the President has proposed that the Department of Health, Education, and Welfare be authorized to collect and analyze data on injuries associated with consumer products (Nixon, 1971, p. S. 1881). When the evidence indicated that there was an unreasonable risk in using it, the product could be banned. For products that are safe if properly made, safety standards would be established by

the Government and there would be stiff penalties for producers who failed to meet them. Controversy on this proposal centers on whether the measures proposed are strong enough and on whether there should be provisions for pre-testing to prevent hazardous products from coming on the market.

4. Fraud Prevention

It is generally agreed that existing Federal legislation does not provide sufficient protection to consumers who are victimized by fraudulent and deceptive trade practices.

The President (Nixon, 1971, p. S. 1881) has proposed strengthening the powers of the Federal Trade Commission to combat fraud and deception by authorizing it to secure temporary court injunctions pending a full proceeding to determine the legality of practices and by extending the Commission's authority to cover transactions that "affect" interstate commerce, not just those that are "in" interstate commerce.

He (Nixon, 1971, p. S. 1881) has also advocated enactment of a Fraud Prevention Act which would prohibit a broad but clearly defined range of practices, authorize the Justice Department to enforce these prohibitions in the Federal courts, and, following this action, consumers—as individuals or as a class—could go into the Federal courts to recover damages. Discussions of this proposal have centered primarily upon the proviso that consumer suits cannot be filed until after governmental action has been successfully completed.

5. Consumer Advocate

As consumers have become better organized, they have been increasingly vociferous in demanding that their interests be more strongly represented in legislative, enforcement, and regulatory matters that affect them. By executive order, in February 1971, the President created an Office of Consumer Affairs in the Office of the President and charged it with responsibility for coordinating Federal consumer protection programs; giving special attention to assisting with the consumer problems of the poor, the elderly, and the disadvantaged; handling consumer complaints; developing information of interest to consumers and in other ways serving as an advocate of consumers (Nixon, 1971, p. S. 1880).

The President recognized, however, that even stronger measures were needed if the interests of consumers were to be equitably balanced with the interests of producers and providers. Advisory groups have made differing recommendations on how this could best be done. Some have suggested that the advocacy function be given to the Department of Justice, others see it as the function of the Federal Trade Commission, others want an independent agency, others believe in giving stronger powers to the Office of Consumer Affairs in the Office of the President. Noting these differences of opinion, the President made no legislative proposals in his message but called for further public discussion in the hope that a consensus could be reached.

6. Other Proposals

Other sections of the President's consumer message (Nixon, 1971) which reflect a response to generally recognized needs include expansion of consumer education programs; establishment of a fraud clearinghouse to expedite the collection and dissemination of consumer fraud information; and the establishment of various advisory bodies which would involve consumers, business people, and various specialists in further efforts to improve the Nation's programs of consumer protection.

B. INDIVIDUAL AND COLLECTIVE ACTIVITIES

Knowledge about consumer needs and how to meet them has been garnered over the years by many individuals, voluntary groups, and State and local officials as well as by the Federal Government.

Individuals like the late Rachel Carson, Ralph Nader, and others have demonstrated what can be accomplished by carefully documenting and publicizing practices and products that adversely affect the consumer.

Senior citizens organizations, labor unions, consumer cooperatives, and other voluntary organizations have demonstrated the efficacy of collective action, both in getting better values at lower prices and in stimulating reform measures in business and government.

Some of the problem areas identified by such efforts and proposals for dealing with them include:

1. Door-to-Door Sales Practices

Lonely old people and those who find it hard to get out to shop for goods and services are especially susceptible to the wiles of salesmen who come to their doors. To protect them against unscrupulous salesmen and high pressure sales tactics, it has been suggested that door-to-door salesmen be required to register in a local government office and that there be a 72 hour "cooling off" period during which a buyer could cancel any sales contract he had signed.

2. Installment Sales Practices

While the Federal "truth-in-lending" law has helped to reduce the exorbitant interest charged for loans and installment buying, it does not protect the consumer from problems that arise when the goods or service turns out to be unsatisfactory, or even non-existent. The contract which the buyer signed can be sold to a third party and if the buyer does not get or has a complaint about the goods or service he contracted for, there is nothing he can do about it. A proposed remedy for this is to make the third party as liable as the original seller for any failure to fulfill the terms of the contract.

Another suggestion is the establishment of more small claims courts where consumers can present their grievances without having to hire an attorney and go through more formal court procedures. It is also suggested that such courts be authorized to hear consumers who wish to defend themselves against creditors who claim they have a right to repossess an article.

3. Insurance Problems

"No fault" auto insurance to reduce the cost of premium and expedite the settlement of small claims, elimination of age discrimination provisions in various types of insurance, stronger safeguards against high-cost low-benefit health and other insurance policies are among the many proposals for insurance reforms that have been proposed by senior citizen and other groups.

4. Protection Against Inflation

Because so many of them live on fixed incomes, the elderly are especially affected by inflation. Measures that have been proposed to help them include encouraging private pension plans to offer workers the opportunity to put some of their contributions to the company's retirement fund into an investment fund; offering "senior citizen" or "constant purchasing power" U.S. Government bonds which would assure that the value of such an investment for

retirement income purposes would not be eroded by inflation; using wage and price controls to curb extreme inflation.

5. Consumer Research

Very little research has been devoted to the study of how food, clothing, housing, and other essentials could be created or modified or otherwise improved to meet the special needs of the elderly. Studies are also needed to develop more effective methods of reaching older people through consumer education programs and of motivating them to use consumer information.

IV. THE PRESENT SITUATION

The most hopeful aspect of the present situation is the interest in consumer protection; never before has there been such widespread public concern about pollution, product quality, prices, and other consumer problems or such strength in the consumer movement.

A. PUBLIC PROGRAMS

Both the executive and legislative branches of government at all levels have given increasing attention to consumer needs in recent years. Not only the Federal Government, but many State governments have taken recent action. There are now consumer protection agencies of some form in 33 States. Many are just getting started, but a few States have relatively strong programs.

For example, New York has set up a Consumer Protection Board whose powers include representing consumers before administrative agencies, helping consumers file class action suits, working with business and industry on consumer problems, conducting consumer education and product testing programs, and making recommendations for consumer legislation (Wertheimer and Sell, 1970, p. 4).

At least two States, Wisconsin and Connecticut, have established agencies comparable to the Federal Trade Commission with power to obtain administrative cease and desist orders against businesses that use unfair or deceptive trade practices (La Follette, 1969). Pennsylvania has pioneered in developing consumer education programs geared to the needs of the elderly (Knauer, 1969).

Several States have enacted laws authorizing the attorney general to restrain unfair or deceptive trade practices by means of a civil injunction before the courts. In the past, the task of prosecuting cases of fraud or deception was usually left to district or county prosecutors, using criminal statutes, and this proved effective only in the most flagrant cases.

B. MODEL LAW AND CODE

To encourage States to adopt more effective measures, including the use of civil injunctions, the Federal Trade Commission has developed a model law: the Uniform Unfair Trade Practice and Consumer Protection Law (La Follette, 1969).

Another measure designed for adoption by the States is the Uniform Consumer Credit Code developed by the National Conference of Commissioners on Uniform State Laws (La Follette, 1969). While this code is not as strong as many consumers would like, it does have such features as controls over door-to-door sales and various protections for people who sign sales contracts or buy on the installment plan.

C. LOCAL PUBLIC PROGRAMS

Legal service programs for the poor have markedly stepped up their efforts to see that consumers' rights are protected through the use of litigation and other legal strategies. New York City has set up an Office of Consumer Affairs which carries on an aggressive program of consumer education and action against fraudulent and deceptive trade practices (Wertheimer and Sell, 1970, p. 4). About a dozen other localities also have some type of public consumer protection program.

D. VOLUNTARY PROGRAMS

To an extent never equalled before, senior citizen groups, local retirement centers, and other community groups are pooling the funds of their members to buy food, housing, medical care, and other goods and services. Some of the results include: scores of senior citizen housing developments; hundreds of programs for buying drugs, hearing aids, and eyeglasses; cooperative home repair services; and non-profit insurance organizations.

An innovative project to help groups develop consumer education and action programs is the course for consumer counsellors which has been developed by the New York State School of Industrial and Labor Relations. Its purpose is to train retiree members of community organizations to serve as consumer counsellors to other older people. The course involves 12 sessions of lectures, discussions, and field visits. A Handbook (Wertheimer and Sell, 1970) has now been published which makes it possible for the course to be used in any community.

E. PROVIDERS OF GOODS AND SERVICES

Consumer concern has struck a responsive chord among many providers of goods and services.

This has been most evident in the area of pollution control. Many industries now find that it is more effective to take and to publicize measures to prevent pollution and protect the environment than to focus on other features of their products or practices.

Although hospital, medical, nursing, and other professional associations have a long history of accreditation and other self-policing measures, many are examining their practices more critically and adopting stronger programs. Many members of the health professions who assist in the administration of Medicare and Medicaid programs have helped to expose members of their professions who violate ethical practices.

Retail businesses also are showing increasing consideration of the needs and interests of elderly consumers. For example, one restaurant in California, aware that many older customers have small appetites, makes available to them the smaller-portion, lower-priced meal that most restaurants offer only to children. Several stores have put benches at various points for the elderly and the handicapped to rest and have adjusted toilets and other equipment to meet the needs of the handicapped.

F. UNFINISHED BUSINESS

It would be a mistake, however, to conclude from the above evidences of progress that the inequities suffered by consumers in the marketplace are well on the way to correction.

There are still 17 States that have no type of consumer affairs office and all State programs are inadequate (Knauer, 1969). Local public programs remain a rarity. The majority of consumers have yet to identify themselves with the consumer movement in any meaningful way. In all fields, the providers of goods and services too often put profit ahead of concern for the consumer.

Federal action, which is crucial to the protection of the consumer, is far from being on a scale sufficient to cope with the problem. Evidence of this was cited at recent Senate Hearings by officials of the Post Office Department, the Federal Trade Commission, the Food and Drug Administration, and other governmental agencies (U.S. Senate, Special Committee on Aging, 1970, Appendix 1).

For example, the Chief Post Office Inspector estimated that over the past six years fraudulent "business opportunity" schemes had cost the public nearly \$26 million before the culprits were found and put out of business. The Food and Drug Administration ultimately put out of business the seller of an "emergency respirator" which was both worthless and dangerous—but not before 40,000 of these devices had been sold. Typical of the hundreds of

investment swindles which are prosecuted by the Government every year was one which had bilked \$4 million from gullible investors.

The very multiplicity of agencies in the Federal Government that are concerned with consumer problems may of itself constitute a problem. This was the contention of Peter Barash (1969) who spoke at the University of Michigan Conference on Aging in these terms:

At present the American consumer's voice is faintly heard through some 33 Federal Departments and agencies carrying on approximately 260 consumer activities. But consider that:

- ... Responsibility for enforcing the Truth in Lending Act is vested in nine separate agencies;
- ... Administration of the Fair Packaging and Labeling Act is divided among three agencies—the Federal Trade Commission, the Food and Drug Administration and the Department of Commerce;
- ... No less than five Federal agencies are responsible for consumer protection of the poor;
- ... The Flammable Fabrics Act of 1967 is shared by the Department of Commerce, the Federal Trade Commission and the Food and Drug Administration;
- ... Responsibility for the wholesomeness of fish and fishery products falls both to the Food and Drug Administration and the Interior Department's Bureau of Commercial Fisheries;
- ... Programs to control air and water pollution can be found in half a dozen agencies.

These laws, individually good, have proliferated beyond the ability of present governmental structure to handle them.

Despite the large number of Federal agencies that purportedly represent the consumer, it is still a fact that:

There is no single Federal agency to which consumers can direct complaints;

There is no single Federal agency devoted to the pressing needs of either the low income or the elderly consumer;

There is no single Federal agency which gathers and disseminates to the public the considerable product and economic information that is available at the Federal level;

There is no single Federal agency which represents the consumer interest before the Federal courts, departments and regulatory agencies on matters of great moment to the consumer;

There is no single Federal agency in which the consumer education function resides;

And certainly there is no single Federal agency which can boast that it has consistently anticipated consumer problems instead of reacting to them on a crisis basis.

What then is the consumer record of our Federal Government?

- ... Are we satisfied with the performance of our regulatory agencies in advancing the consumer interest in America?
- ... Has the Federal Trade Commission been a vigorous champion of the consumer cause?
- ... Has the InterState Commerce Commission effectively represented the consumers' interest in matters relating to household moving problems and the railroad passenger service?
- ... Has the Federal Communications Commission been an effective advocate for the public in policing the airwaves?
- ... Has the Department of Commerce moved with dispatch in approving flammability standards for clothing or in administering its portion of the Fair Packaging Act?
- ... Has the Department of Agriculture strived to achieve the most effective and far-reaching consumer food grading program, as Congress directed it to do?
- ... Is the welfare of consumers a prime consideration of the Interior Department when its Oil Import Administration establishes quotas for cheap foreign petroleum products?
- ... Do the efforts of the Department of Transportation's National Highway Safety Bureau in the field of auto safety match the grim reality of 52,000 deaths last year on our highways?
- ... Is it in the long-range best interests of consumers that solutions to many of their most important problems are entrusted to temporary commissions like the Food Marketing and Product Safety Commissions, whose recommendations are largely ignored because of the absence of an institutional framework for continuing action?

Mr. Barash did not limit his criticisms to Government. He also indicted consumers themselves. He noted, for example, that when the Department of Agriculture asked for comments on two significant changes in beef grade standards—a highly important matter to consumers—only a handful of the 800 people who responded represented consumer interests. He also said that not one private consumer spokesman had appeared at any of the hearings held over the past five years by the Oil Import Administration of the Department of the Interior although the size of the quotas it sets on oil imports directly affects the prices consumers pay for many essential products.

G. CONCLUSION

It is easy to blame the private and public sectors of the economy—their greed, indifference, inefficiency—for the problems of the consumer but the ultimate cause—and cure—of consumer problems rests with the consumer himself.

Individually, he can accomplish much by such simple actions as following the very brief but sound advice contained in a consumer guide, designed to fit the identity card section of a wallet, which has been published by the Administration on Aging of the Department of Health, Education, and Welfare (1969).

Collectively, he can accomplish even more by developing and participating in consumer programs in the groups to which he belongs, by enlisting business and industry cooperation, and by working for the enactment and enforcement of more official programs at all governmental levels.

It is doubtful indeed that the cost of genuinely effective consumer protection measures would begin to equal the dollars that are wasted because of the lack of such measures.

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B. LEGAL SERVICES

I. THE NEED FOR LEGAL SERVICES

A comprehensive summary of the need was presented at a hearing on legal problems affecting the elderly, conducted by the U.S. Senate Special Committee on Aging in 1970, by Cyril F. Brickfield, legislative counsel for the American Association of Retired Persons (U.S. Senate Special Committee on Aging, 1971a, pp. 110-114). A pertinent section states:

They suffer needless anxiety, deprivation and injustice as a result of a serious lack of adequate legal services, a lack of knowledge as to the proper manner of securing those services which are available, and the lack of financial resources to retain the aid of competent counsel even when available. This situation must be remedied if we are ever to secure for our elderly citizens the security they rightly deserve. . . .

The elderly have endured, most often in silence, continued violation of fundamental rights and arbitrary denial of benefits due under law. The areas of Social Security and Railroad Retirement benefits, disability benefits, Old Age Assistance, health care and treatment, conservatorships, guardianships, public and private housing, consumer fraud, mental commitment, private pension plans, taxes, and general economic deprivation provide fertile fields for the germination of complex legal problems whose solution requires competent legal aid.

As a group, the elderly are the least capable of articulating their own needs and bringing them to the attention of the government. The situation is aggravated of course by the timidity and withdrawal which characterize the elderly and by the uninterest in the elderly characteristic of lawyers. Yet, it must be remembered that older Americans, under our judicial system, are entitled to the same qualified and thorough legal representation afforded other segments of our population.

Forced to readjust to a mode of living dictated by the diminished income he receives, the retiree in this country must also struggle with a variety of overlapping, often poorly integrated Federal and State income maintenance programs, the technical complexities of which often prevent him from obtaining the maximum number of precious dollars of income to which he is legally entitled. Benefit and assistance programs are of little value if their existence is unknown to the otherwise eligible individual, if their technical language is beyond the comprehension of the average unaided beneficiary or assistance recipient, or if the procedural morass through which he must pass requires a degree of patience and mental acuity possessed by few. Obviously, the difficulty and expense of obtaining competent counsel to represent individual interests must be overcome if the legal and equitable needs of the elderly retiree are ever to receive adequate attention. It is not enough to establish a benefit program; the individual, as experience has indicated, must be provided with the qualified legal assistance in order that he may obtain that which was intended for his benefit.

At the same hearing, Senator Harrison A. Williams, Chairman of the Special Committee, reported on letters the Committee receives which contain tragic examples of legal needs. (U.S. Senate Special Committee on Aging, 1971a, p. 2). He said:

We read about couples who are turned out of their homes because relocation laws are not implemented.

We read about a blind man who is struggling alone on inadequate Social Security benefits because he didn't know, until a legal advocate told him, that he was entitled to \$4,600 in back benefits.

We read about elderly people who are kept in mental institutions simply because there is no other place for them.

II. THE GOALS OF LEGAL SERVICES

"Equal justice under law" is the basic goal to be achieved by the provision of adequate legal services to the aged. At present, many older people do not have access to the rights and protection which existing laws provide.

Beyond that, however, legal goals include the correction of inequities in the laws themselves—such as unwarranted age discrimination provisions—which work a hardship on older people.

A further goal is to help the elderly achieve a capability, comparable to that of other special interest groups—agriculture, business, labor, etc.—to present their special needs before legislative, administrative, business, professional, and other organizations whose actions are essential to the meeting of those needs.

A more philosophic expression of the goals of legal services was recently expressed by Norman J. Kalcheim (1970), Chairman of the Consultant Committee on Legal Services to the White House Conference Technical Committee on Facilities, Programs, and Services. "If we are to continue to give recognition to the dignity of the individual, his rights and needs, we must, in full measure, do so for the older person," Mr. Kalcheim said. "He has made his contribution to our society. Though no longer as productive, he does hold a social lien on the rest of us. This social lien must be made effective through all the manifold processes a democracy possesses—through the legislatures, through the courts, and especially the legal profession, for it is they who bear great responsibility in daily struggles for principal and justice."

III. KNOWLEDGE AVAILABLE

Although studies and activities related to the legal needs of the aged have been extremely limited, an impressive body of knowledge has been compiled by the American Bar Association, the National Council on the Aging and other voluntary groups, by public agencies such as the Administration on Aging, the Community Services Administration and the Office of Economic Opportunity, and by law schools and other research institutions. Some of the most serious problems and proposals for dealing with them include:

A. PROTECTIVE SERVICES

As more people live into their 80's, 90's and longer, the number who are incapable of managing their own affairs, i.e., managing their money or being able to carry out the activities of daily living without assistance from someone else (management of the person) has increased and the inequities of traditional methods of handling the problem have become glaringly apparent.

Even for the affluent older person who receives legal services and whose estate can finance guardianship and conservatorship costs, there are insufficient safeguards to assure that the interest of the older person will take precedence over the interests of those who will ultimately benefit from his estate.

The elderly poor and those who have no relatives are usually committed to a mental hospital. Between 1948 and 1968, when mental hospital admissions were declining for other age groups, admission of patients 65 and over increased 40 percent. Many of these patients receive only custodial care; the real reason for their commitment is that they need some degree of supervision. Frequently, the condition of an older person when he is committed is no different than it had been for months or years previously, but he is committed because he attracted attention to himself by some episode which created a demand that something be done.

The injustice of this practice was highlighted by a case that ultimately came before the U.S. Court of Appeals in the District of Columbia (*Lake vs. Cameron* in 1966) (National Council on the Aging, 1966; Allen, 1969). Four years earlier, Mrs. Lake, who had been wandering about the streets, was taken by a policeman to a general hospital and from there committed to a mental hospital. With no resources and no assistance except the efforts of a sister who was also old and poor, Mrs. Lake suffered defeat after defeat in her efforts to be released. However, her case ultimately came to the attention of the Court of Appeals where a judge, long concerned about the problems of confused older people, was instrumental in starting the machinery which resulted in Mrs. Lake's case being handled, for the first time, by a lawyer and in the Court's decision that, since her real need was for supervision rather than psychiatric treatment, alternative methods of providing this must be explored.

Lake vs. Cameron is considered a landmark case by many because it brings into question the legality of depriving people of all their liberties and civil rights, not because of their own shortcomings, but because of deficiencies in community services and resources which should be available to them.

During the same period that the legal aspects of the problem were receiving this attention, a number of communities were testing out this new approach:

A welfare agency in the community, after working out cooperative arrangements with representatives of the medical and legal professions, assumes responsibility for looking into these situations. In many instances, the agency finds it possible to enable the old person to

retain all his rights by providing him with homemaker, home health, casework and other services. When his condition does not permit this solution, the agency is appointed as his guardian and sees that he is properly cared for either in his own home or a nursing home. As guardian, the agency also assume conservatorship responsibilities for management of whatever assets he may possess. Only persons who require psychiatric treatment are committed to mental hospitals and, when this action is deemed necessary, the older person is notified of the sanity hearing, provided with a lawyer to represent his side of the case, and is given a full, evidentiary hearing. In these protective services programs, as they are called, members of the legal, medical, and social work professions operate as a team.

Research on the problem also advanced during the 1960's. One project, sponsored by the Syracuse University College of Law (Alexander, 1969) consisted of examining practices in the management of the estates of persons who had been declared incompetent to find answers to these questions:

Is the management conducted with the intent of maximizing the incompetent's enjoyment of his property or with the intent of protecting the interest of some creditor, heir, or other person?

Is the incompetent consulted about his desires on how his estate should be managed?

Is the primary purpose of the management to increase the size of the estate?

The study revealed that most of the persons were not completely incompetent and that legal guidance or the use of the power-of-attorney mechanism would have met their needs better. It was also found that the management of the estates of older people was not conducted primarily for their benefit. A great number of the estates were managed for the primary purpose of paying bills owed to mental hospitals. Although only a few cases studied involved estates of any size, many of these were managed by persons who had a distinct interest which was adverse to that of the incompetent. In one of the cases studied, an elderly man was declared incompetent because he accused his son of stealing from him and this same son was appointed to be his guardian.

The study also showed that procedures for declaring a person incompetent gave him little protection. His attorney was seldom paid out of the estate and got a very small fee (average was \$268), whereas the attorney representing those who sought to have the elderly person declared incompetent got a much higher fee (the average was \$1,341). In view of this, it is not surprising that not a single case was found in which an appeal against the incompetency finding was filed.

B. LEGAL RIGHTS AND BENEFITS

The intent of laws and public programs designed to aid the elderly is often undermined because of technicalities which the older person either does not understand or does not know how to use to his advantage.

For example, persons who are not satisfied with administrative decisions about their Social Security benefits or Old Age Assistance payments are entitled to a hearing, but administrative procedures sometimes deter older people from exercising this right.

Lawyers who have studied fair hearing practices have recommended that all such hearings should have the following components:

Adequate notice of the right to a hearing and the matters to be considered.

Opportunity to be represented by legal counsel and to have an impartial decision-maker.

Opportunity to examine opposing evidence prior to the hearing and time to prepare for the hearing.

Opportunity to confront and cross-examine adverse witnesses.

A prompt, written decision.

Some lawyers would add to this list a prohibition against use of hearsay evidence. Under present practices, such evidence is admissible.

Lack of legal assistance in appraising the terms of benefit programs is also known to prevent some older people from acting in their own best interest. For example, in some instances, it may be better for a person not to apply for Social Security benefits because they would make him ineligible for higher Old Age Assistance grants and participation in the Medicaid program. Conversely, some people do not apply for Workmen's Compensation benefits or do not work because of mistaken ideas about how this would affect their Social Security benefits.

Many older people have likewise suffered unnecessary hardships because they had no lawyer to protest against lax enforcement of the relocation provisions in urban renewal, highway construction, and other public programs which involved the destruction of their homes.

The laws designed to assure that a person's possessions will be distributed after he dies in accordance with his wishes are often nullified in their effect because older people do not have legal advice about whether or not it is to their advantage to make a will or do not have help in making a proper will.

C. INEQUITIES IN LAWS AND PROGRAMS

Considerable evidence has been developed which points to the need to use legal strategies for reform. Some of the major areas for such action which have been identified by students of the problem include:

1. Age Discrimination Provisions

Many people believe that the practice of requiring employees to retire at a certain age should be prohibited. If an employee is mentally and physically healthy and is performing his duties competently, they feel that the justifications for this practice—to make room for younger workers and to avoid placing stigma on the older worker whose performance has declined with age—are not sufficiently valid to warrant a practice which deprives many capable workers of their jobs.

The provision in the Federal age discrimination law which makes it applicable only to workers who are under 65 is also unjust in the opinion of many.

Because older drivers have a generally good safety record, many people believe that there is age discrimination in present practices which make it difficult—and even impossible for some—to get driver's licenses and auto insurance. Provisions in health, life, and other insurance policies also need to be analyzed by lawyers who can develop strategies for collecting their inequities.

2. Public Benefit Programs

Various provisions in laws and administrative policies governing public benefit programs are believed to result in inequities that should be challenged by lawyers. Questions of equity raised by some lawyers and other people include:

When the Medicare program determines that a physician made a mistake in certifying a patient as eligible for treatment in an extended care facility, should the patient have to pay the bill?

Does the 100-day limitation on treatment in an extended care facility that Medicare will pay for cause nursing homes to give preference to admitting such patients over those who need longer care?

Should the Social Security law be changed so that older people can work without having their Social Security payments reduced? Should this "retirement earnings test" be abolished entirely? If kept, should it apply to all income, not just earned income?

Should increases in Social Security payments be nullified for some older people by decreasing their private pensions or Old Age Assistance payments—a practice that is now allowed?

In view of the high percentage of adverse decisions on rights to disability insurance that have been reversed when people had money to pay for independent medical examinations and lawyers, should the Social Security program be authorized to pay for such services for the improverished?

Do variations in State laws governing eligibility for Old Age Assistance and other programs that receive substantial Federal support result in geographic discrimination in that where a person lives, not what he needs, determines his right to assistance?

These are just a few of many questions that have been raised by lawyers and others who believe that a critical examination of laws and policies governing the administration of public benefit programs might reveal many ways in which lawyers could contribute to efforts to make such programs more equitable and beneficial to older people.

3. Tax Laws

Questions have also been raised regarding the equitable effects of tax laws. For example, does the heavy reliance on property taxes to finance local government place an unfair burden on the elderly, not only because two-thirds of them are home owners but also because communities' dependence on property taxes makes them less receptive to the development of tax free public and other non-profit housing for the elderly?

4. Consumer Legislation

The prominent role which lawyers need to play in securing justice for elderly consumers has been well established and is detailed in Section A. Consumer Services.

5. Special Concessions

In countless ways, our youth-oriented society makes life unnecessarily difficult for the aged. Therefore, many people feel that it is only just—particularly in view of the extremely low incomes that society permits most older people to live on—to compensate for these social shortcomings by making some special concessions to the aged. Measures advocated include: higher income tax exemptions; lower rates for telephones, transportation, and other public utilities; exemption of elderly home owners from housing code enforcement measures when the violations do not endanger their health and when there is no provision for financing the cost of repairs for those who cannot afford them.

D. MODEL AND UNIFORM LAWS

The variations in State laws affecting the elderly and the failure to enact needed laws—such as those which provide for the public administration of small estates—create many unnecessary hardships for the aged.

To encourage States to adopt more uniform laws and to enact needed laws, the University of Michigan Law School recently drafted model statutes on a variety of matters that are of particular concern to the elderly (National Council of Senior Citizens, 1971). The following table of contents of this model statute document indicates what could be accomplished by a strong State legislative program:

UNIVERSITY OF MICHIGAN LAW SCHOOL MODEL LEGISLATION

Accommodations

- Standards for Building Accessibility and Use
- Rent Control
 - Enabling Act
 - Local Ordinance
- Public Housing for the Elderly
- Non-Profit Rental Housing for the Elderly
- Non-Profit Corporations for Care of the Elderly
- Regulation of Mobile Home Parks and Mobile Homes

Consumer Aid and Protection

- Cost and Accessibility of Drugs
- Licensing of Nursing Homes
- Licensing of Nursing Home Administrators
- Life Care and Payments Contracts
- Regulation of Hearing Aid Dealers

Discrimination

- Age Discrimination in Driver's License Examinations
- Age Discrimination in Automobile Insurance
- Age Discrimination in Employment

Improvement in Existing Programs

- Commission on Aging
- Elimination of Relative Responsibility and of Liens on the Estates of Old Age Assistance Recipients

Family Assistance Plan Enabling Act

- "Pass Through" of Social Security Benefits to Recipients of Old Age Assistance

Protective and Supportive Services

- Guardianship and Conservatorship
- Public Guardian
- Special Power of Attorney for Small Property Interests
- Local Protective and Supportive Service Systems
- Provision of Services and Facilities by School Districts

Rate and Fee Reductions

- Public Utility Rate Reductions
- Public Utility Deposit Exemption
- Transportation Rate Reduction
- Free Hunting and Fishing Licenses

Tax Relief

- Income Tax Credit for Property Taxes Paid
- Property Tax Exemption for Homesteads
- Homestead Tax Rent Refund

Miscellaneous

- Adult Education
- Institute of Gerontology
- Multi-Purpose Senior Centers
 - Multi-Purpose Senior Center Authorities
 - Non-Profit Corporations to Establish Senior Centers
- Regulation of Retirement Systems
- Removal of Barriers to Volunteer Programs
- Special Identification Cards for the Elderly

E. EDUCATION

The Committee on Legal Problems of the Elderly of the American Bar Association has recommended that all law schools, in their courses on family law, emphasize legal problems of the aging (U.S. Senate Special Committee on Aging, 1971a, p. 9). This action gives significant professional recognition to the concept that lawyers require special kinds of training and field work to prepare them to give direct services to older people and to carry out law reform and research activities in the field of aging.

The value of also training lay people to serve as lawyer's aides has been documented by demonstration programs. Such aides can assist clients in administrative procedures and carry out other duties that do not require professional training.

IV. THE PRESENT SITUATION

Two recent developments indicate that more personnel to provide legal services for the elderly may soon be available: enrollments in law schools have reached an unprecedented high; and students and recent graduates are showing a greater interest than ever before in using their training to serve groups that have had little access to legal aid in the past.

How much the elderly will benefit from this trend, however, is hard to predict. The legal services programs supported by the Office of Economic Opportunity employ almost 2,000 lawyers to provide free legal services in over 250 communities, but, although a third of the poor are older people, only a few of them have benefitted from these programs.

A. LEGAL RESEARCH AND SERVICE FOR THE ELDERLY

The major OEO support for legal programs for the elderly has been a grant to the National Council of Senior Citizens. This is financing 12 projects in different parts of the country. The work of these projects was outlined to the U.S. Senate Special Committee on Aging (1971a) by a project staff member as follows:

I would divide the work of the project into three broad categories.

First, our elderly clients brought to us cases of bad administration of existing Federal, State and local programs. These cases had to be handled as any law cases are. We must assemble a set of facts; present them to a forum, be it an original administrative agency, an appellate agency, or ultimately a court; and resolve the matter by settlement or by a decision . . .

Second, under existing law in many States and under Federal law, we have found opportunities for improving elderly economic and social conditions by representing the elderly in traditionally available but hitherto unused forums. The goal is to make the elderly into a vocal interest group as impressive to the rest of the community and to agencies of government as other interest groups which are more obviously identifiable, such as business and labor and, may I add, the youth and women. This use of legal research and services is similar to that employed by consumer groups, but is especially addressed to elderly issues. Utility rates and special utility services are examples of this part of administrative law.

Third, where existing statutes were inadequate, notably on the State level in many jurisdictions, the legal research and services program has been available for drafting, filing and, indeed, lobbying of legislation in State houses, city councils and other local legislative bodies to provide new programs, improvement of old programs, increases in benefit levels, and the elimination of antiquated and inefficient procedures having their origin in statutes and ordinances . . . likely to be eliminated by new enactments (p. 22).

Achievements under this program, which began in late 1968, include: helping the elderly poor in San Francisco to establish business enterprises; introducing eight bills in the Massachusetts legislature, ranging from utility rate reductions to the appointment of public conservators; helping the elderly poor in Albuquerque to organize cooperatives and buying

clubs and to develop employment opportunities; securing free bus service, two full days a week, for senior citizens in a rural Kentucky county; and securing a rent control ordinance for the benefit of the elderly poor in Miami, Florida (U.S. Senate Special Committee on Aging, 1971a, Appendices A, B, and C; 1971b, pp. 82-83).

Lawyers employed in the 12 projects have represented the elderly in hundreds of cases involving mental competency, benefit rights, fraud, health care and treatment, housing, and other problems.

B. PROTECTIVE SERVICES

The National Council on the Aging (1968) conducted a National Institute on Protective Services in 1968 and the published report of the Institute contains guidelines designed to help and encourage communities to establish protective services programs.

The Federal Government has underwritten demonstration programs of protective services in local public welfare agencies and in those States electing to provide social services to the elderly pays 75 percent of the cost of operating such programs on a Statewide basis so that they will be available to rural as well as urban communities (U.S. Department of Health, Education, and Welfare, 1968). Despite this financial incentive, only about 40 of the 54 States and Territories have provided such services through their public welfare departments.

Both the Social Security and the Public Assistance programs have developed adequately safeguarded procedures for making benefits or assistance payments to guardians or other authorized persons on behalf of elderly persons who are unable to manage their many payments. However, these arrangements cover only payments from these programs, not other income which the elderly person may have.

To meet the broader needs of older people who need but cannot afford to pay for the services of guardians or conservators, a few States have enacted public guardianship and conservatorship laws.

In a few communities, voluntary agencies—for example the Sheltering Arms in Houston, the Benjamin Rose Institute in Cleveland, and the United Charities in Chicago—(National Council on the Aging, 1968) have assumed responsibility for providing protective services. In general, despite the shocking need for such programs, most communities leave to chance what happens to an elderly person who gets lost, forgets to eat regularly, loses or squanders his money, or otherwise demonstrates that he needs assistance in managing his affairs. If his eccentric behavior sufficiently disturbs relatives or the public, he will be offered little or no protection against those who wish to have him locked up forever in a mental institution.

C. ENFORCEMENT OF RIGHTS

The Federal Government has recognized the need to have lawyers represent clients in hearings to determine whether their Public Assistance payments should be reduced or terminated. Since 1969, as one of the conditions for obtaining Federal support for Old Age Assistance and other Public Assistance programs, States are required to pay for the cost of a client's attorney (U.S. Department of Health, Education, and Welfare, 1968). It is up to the client, however, to request a hearing and to request that a lawyer represent him and there are undoubtedly State and local variations in the extent to which the client is helped and encouraged to make such requests.

The Federal Government also makes it possible for people who are not satisfied with decisions about their Old Age Assistance or Disability Insurance payments to be represented by lawyers in hearings and court appeals. However, the method used—allowing attorneys to retain up to 25 percent of the past-due benefits collected subject to court approval—makes it difficult for older people to get lawyers to take their cases. Often, lawyers will delay action until the past-due benefit stake is large enough to promise a sizeable fee if the case is won (U.S. Senate Special Committee on Aging, 1970).

In many situations that confront older people, however, there is no attempt by anyone to help them get the legal aid they need to enforce their rights. Legal aid societies, public defenders, and other free legal services programs are swamped with cases and it is the younger and more aggressive who are most apt to demand and get their help.

As one way of making more legal services available to the poor, the Federal Government, under the Public Assistance program, has offered to pay 75 percent of the cost of paying for legal aid for the elderly and others who receive Public Assistance.

Often, when an older person does get competent legal assistance, it is by mere happenstance. The Lake vs. Cameron case (National Council on the Aging, 1966) would never have existed had not the judge who reviewed the request for an appeal hearing happened to be sensitized to the basic problem. Two elderly women in Massachusetts got their rights enforced just because they happened to get into conversation with a lawyer who had come to the Public Welfare office on other business. He volunteered to help them and got their request for additional Old Age Assistance approved after it had previously been denied.

D. LEADERSHIP OF THE LEGAL PROFESSION

The American Bar Association has formed a Committee on Legal Problems of the Aging (U.S. Senate Special Committee on Aging, 1971a, pp. 8-9) which has made recommendations on legislation, on law school courses, on uniform laws, and other legal issues. The Committee has also publicized the legal needs of the aging at U.S. Senate hearings and in other ways.

Several law schools include field work in legal aid and other free legal services programs as part of the training of law students. The Universities are also giving increasing attention to legal research and law reform activities of benefit to the elderly. For example, Columbia University has recently established a Center for Legal Problems of the Elderly which conducts research and provides technical assistance to projects that serve the elderly poor. A Fordham University Law School project of special interest to the aged is designed to produce legislative recommendations for reforming the administration of small estates (U.S. Senate Special Committee on Aging, 1970).

While these and other evidences of increased legal interest in the problems of the elderly are encouraging, it remains true among lawyers, as among all other segments of the population, that the efforts to secure for the aged "equal justice under law" are still minimal.

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PART THREE: ISSUES

It is apparent from the foregoing parts of the paper that all types of programs for meeting major needs of the elderly have certain common denominators. Some, such as training and research needs, are of such dimensions that they have been covered in special papers as well as in those relating to specific needs. Other principles, problems, and activities that affect all programs were covered in Part One and Part Two preceding. The issues relating to them which are presented below were selected either because they need to be considered in the broad context of all programs or because—as in the case of consumer protection and legal service issues—other more topically-related issues precluded their consideration in the papers on special needs.

Issue 1.

Should tax funds for facilities, programs, and services be allocated in such a way as to maximize the likelihood that older persons will continue to live in their own homes as they become progressively enfeebled? Or, should major emphasis be given to the construction of institutions with the expectation that residence in an institution will become the principal living arrangement for chronically ill and handicapped older people?

The current trend seems to be toward greater emphasis on institutional care. There are several reasons for this: less manpower is required to provide health, personal care, recreational and social services to feeble older people when they are housed together; families of the infirm elderly often feel more secure about the care they will receive in an institution and this feeling is often shared by older people themselves; the lonely and isolated often become less withdrawn when they join others in an institution. It is easier to obtain public support for the establishment of institutions than for home care programs because people become distressed when those with physical or mental impairments continue to live in their communities.

On the other hand, most older people would like to live as independently as possible as long as possible. If enabling them to do so is determined to be a policy goal, it will have to be buttressed with an increase in supplementary services. This would call for a redirection in priority of expenditures under Medicare and Medicaid so that a larger proportion of health-related services are delivered to the older person in his own home. A substantial network of supplementary home help, home maintenance, and personal care services would be required. The quality and volume of low income housing for the handicapped would have to be improved and increased.

The central question is: to what extent should individuals whose physical or mental conditions do not require active medical treatment or 24 hour a day supervision be given an effective choice between services at home and in an institution?

Issue 2.

Should the present, somewhat random pattern of providing community health, welfare, and other services to older persons through a mixture of public, private non-profit, and commercial agencies be maintained? Or, should more responsibility be channeled into: (1) public agencies? (2) voluntary non-profit agencies? (3) the commercial marketplace?

The source of service can be controlled, to a considerable extent, by decisions about financial support.

If public funds were used exclusively for public agencies, they could become the major source of service. However, when public programs are established, certain safeguards must be spelled out to assure that the program uses the taxpayer's money in the ways authorized. Often, this makes the public agency inflexible and unresponsive to changing conditions.

Voluntary agencies have more freedom to institute changes, but it is doubtful that they could raise enough money through voluntary contributions to provide services on a mass basis. If public funds were used to purchase services from voluntary agencies on a scale commensurate with the need, the incentive of private individuals and foundations to make voluntary contributions would diminish. Nor is there any assurance that the public funds would be adequate. Up to now, public reimbursement for services has usually amounted to less than the cost of the service. Tax incentives have been given to encourage the building of facilities without provision for financing the increased services which the new facilities provide. Another problem is that most voluntary agencies are not designed to offer service on a mass basis and many restrict their clientele to certain religious, ethnic, or other special groups.

Public funds could be used in either of two ways to enable commercial agencies to become the predominant source of service: by the direct purchase of goods and services or by providing sufficient incomes to individual older people to enable them to make such purchases.

If public funds are paid directly to commercial concerns—the system now used to pay for care of Medicare and Medicaid patients in commercial facilities—the question arises as to whether it is a wise policy to use public funds to support commercial enterprises that have no capability of reaching an economic viability of their own. Using public funds to enable individuals to make the purchases would be extremely costly and might well prove to be an incentive for the unscrupulous to enter the market.

Public funds will undoubtedly continue to be used to help support some voluntary and commercial services as well as to finance public programs. However, if a policy is adopted which is deliberately designed to give preference to one avenue of service over the others, the political and ethical factors should be given careful consideration.

Issue 3.

Should the planning and coordination of health, welfare, and other services for the older population be left to the voluntary, cooperative efforts of completely independent agencies and organizations, as is largely the situation at the present time? Or, should such responsibility be placed in newly created public agencies provided with administrative authority and adequate financial controls?

If planning and coordination are entirely dependent on the voluntary action of independent organizations, agreements may be reached only on minor matters, since each agency will feel obligated to assure its own survival and to protect its own special interests.

Compulsory action raises equally difficult problems since it would involve some loss of freedom. While public planning bodies would be subject to citizen control through the legislative process, this is slow and cumbersome. Moreover, the public would be unlikely to be sufficiently aware of and informed about some problems. Thus controls might be allowed to stifle initiative and make it difficult for agencies to respond to changing conditions.

Probably the issue should not be considered in sharp terms of voluntary cooperation versus compulsion, but rather in terms of a multiple approach. To some extent, this is the present method. There are compulsory elements in the eligibility requirements for obtaining grants and other public funds and in licensing provisions. Voluntary cooperation has resulted in the formation of many community planning bodies and multi-service programs. Under either method, conformity and compliance can be obtained only if there is widespread acceptance of the goals and objectives of the plan.

The question is really to what extent responsibility should be diffused among the independent organizations and whether some problems could best be solved by the establishment of a specific public authority with planning and coordination responsibilities.

Issue 4.

Should older people—as consumers or potential consumers—have a major role in determining policies and standards for facilities and services for the older population? Or, should such determination be made by younger people? Similarly, should special effort be made to recruit older persons—perhaps 60 or more years of age—to staff facilities and programs for the elderly? Or, should such employment roles be filled by younger people?

Many older people prefer some slowing down and change of pace from their busy preretirement years and therefore might not be sympathetic to efforts to involve them in policy-making and employment roles. Some people in all age groups would question the employment of older people in programs for the aging because of fear that this might lower the quality of services. With the rapid advances that have been made in knowledge and technology, younger people, whose education has embraced the latest concepts and most recently developed approaches, may be better prepared than older people to give high quality services.

On the other hand, a great many older people would like to continue to be as active as possible. They represent an untapped reservoir of needed manpower. Their accumulated wisdom and experience, as well as their greater awareness of the problems of the aged, might mean that the quality of services to the aged would be improved.

There are also differences of opinion about whether giving older people a bigger role in programs for the aging might accelerate the tendency to segregate the elderly from the mainstream of life.

If a policy of involving more older people in programs that serve the elderly were adopted, measures to prevent age discrimination and to convince employers of the advantages of hiring older people would need to be strengthened. It might also be necessary to provide tax and other financial incentives to organizations that offer opportunities to older people to participate in policy-making and to serve on their staffs.

Issue 5.

Should separate facilities, programs, and services be provided for the older population? Or, should older people be served by facilities and programs established for persons of all ages?

This question arises because of the rather widespread feeling that, in programs serving all age groups, the elderly receive less than their fair share of the available resources, that personnel find it more satisfying to work with younger rather than older people and therefore devote more attention to the young, and that organizations do not take the special needs of the elderly into consideration when they are developing plans, policies, and procedures.

When the elderly are served by special facilities, programs, and services, staff can be selected and trained so that they have special competency. They devote their entire time to older people. Policies and procedures are geared to the needs, attitudes, and behavior of the elderly. There is no danger that funds which should be invested in meeting the needs of the aged will be deflected to other groups. The main problem about this approach is that of securing adequate resources. Unless the physical atmosphere and the quality and volume of service are at least commensurate with what is given to other age groups, segregated programs become second-rate programs.

If it is decided that programs which serve all age groups are likely to have more adequate resources, certain safeguards would need to be established to assure that this method, too, did not result in second-rate service. There are various ways this might be done. Financial support could be made contingent upon some formula which assures equitable distribution of services. Programs could be reviewed by outside investigators to assure that there is an equitable balance. Monitoring units could be set up within the program to assure that staff is responding suitably to the special needs of the elderly. In-service training and other methods could be used to sensitize staff to the problems of older people and to increase their competency in dealing with them.

Attitudes of the elderly and of those who support and administer the programs they need must be considered in resolving this issue. Many older people would resent being set apart from other age groups. On the other hand, many people who support and administer general programs would resist making the adjustments in financing, policies and procedures that would assure the aged of receiving adequate services from them.

Issue 6.

Should primary reliance for consumer protection be placed upon consumers themselves; upon self-policing by industry, business, and the professions; or upon governmental controls?

Caveat Emptor—let the buyer beware—has been the philosophy that has traditionally governed the operation of the marketplace. If the mousetrap is good, customers will beat a path to its maker; if bad, consumers will drive it off the market by their refusal to buy. Both consumers and providers are left entirely free to act in whatever way they believe will best serve their interests.

Many people believe that, even in our complex society, this is still the best system. They recognize, however, that in order for it to work under present conditions, positive actions must be taken to help consumers use their power of choice more effectively. Measures that have been proposed include the development of strong consumer education programs and the use of more informative and understandable facts on labels and packages. Some also advocate legislation which would enable consumers as a class to bring suits against producers and sellers who have disregarded consumer interests. At present, the high cost of legal action deters many individual consumers from seeking redress in the courts.

Those who would like to see more emphasis placed on self-policing by the providers of goods and services present such arguments as these: Even the best informed consumer cannot always evaluate the relative merits of modern goods and services since the knowledge required to do so is often highly technical and specialized. In some places, there is only one source of supply for a particular product or service. Our economy no longer operates on a highly competitive basis; most providers offer similar quality at similar cost.

Advocates of stronger self-policing measures would rely primarily upon mechanisms set up by trade associations, professional societies, chambers of commerce, etc., whereby representatives of their members establish quality criteria and set guidelines for prices and fees. By widely publicizing the recommended standards and charges, these self-policing bodies would not only enable consumers to demand them, but would also impel providers to observe them. This approach, they believe, would preserve the freedom of the private entrepreneur and build upon the desire of the vast majority of them to serve the consumer well.

Advocates of more governmental controls believe that our economy has become so complex and interdependent that neither competition nor voluntary self-policing can offer adequate protection to the consumer. They note, for example, that the forces of inflation have sometimes proved too strong to be curbed by any type of non-governmental action. They also point out that, in programs such as Medicare and Medicaid, where emphasis has been placed on self-policing methods, inferior services and facilities, and exorbitant charges continue to be a

problem. Competition, they say, too often results in American companies selling their products at low prices abroad while retaining high prices here at home.

Measures that have been proposed that reflect this viewpoint include using wage and price controls to curb inflation; making it mandatory for trades and professions to establish criteria and cost guidelines for goods and services purchased with public funds and requiring compliance with them; and enactment of other legislation which would place primary emphasis upon the interests of consumers and increase the enforcement powers of the government. Proponents of such measures recognize that they would place additional restraints upon our free enterprise system but believe that they are justified as a means of creating an equitable balance of power between consumers and the providers of goods and services.

These various proposals are not mutually exclusive. Almost everyone, for example, sees the need for more consumer education and for some type of consumer legislation. The real issue is one of emphasis and priorities. Those who are concerned about the problems of elderly consumers need to agree upon what problems are most serious and what measures are most likely to alleviate them so that they can exert maximum pressure to get the actions they consider most important.

Issue 7.

Is a central consumer agency needed at the Federal level or could the interests of elderly consumers be better served by strengthening the powers and responsibilities of existing Federal agencies?

Those who favor a centralized agency believe that under the present system, in which many Federal agencies share responsibility for protection of consumer interests, little attention is given to the special needs of the elderly. A central agency, they believe, would be more likely to conduct research, informational, and protection activities for the aging. A central agency could also take a more coordinated and comprehensive approach to the problem, eliminating the gaps and duplication which characterize present programs.

Opponents of this view believe that, since all of the Federal agencies involved in consumer protection have special competencies for dealing with consumer problems in their own fields, they can do a better job than could a single agency that tried to cover all fields. They advocate financial, enforcement, and other measures to strengthen the consumer programs within existing agencies as the best way of helping the elderly as well as all other consumers.

Related to this issue are the organizational problems of setting up a consumer agency and determining whether it would be most effective if it were an independent agency or a part of the Office of the President or the Federal Trade Commission. There is also the question of what provisions could be made, either in existing programs or in a centralized program, to assure coordination of activities and adequate focus on the special needs of the elderly.

Issue 8.

Should public policy authorizing intervention in the personal and property affairs of the aging alleged to be unable to manage their affairs be improved to better serve older people? Or, should such persons be free to manage their own affairs?

The justification for intervention in the affairs of the elderly is based upon the long-standing principle of governmental responsibility for protecting the person and property of the individual. The law steps in to protect when a person has become a danger to himself or to the community. The law also protects property when the owner is incapable of protecting it himself. The legal devices used are guardianship of the person and conservatorship of the property.

Because of growing evidence of the abuse of these legal measures, some people believe that non-coercive measures should replace them. They would place greater emphasis on the use of voluntary commitment procedures and on the development of protective and supportive services. They believe that many elderly persons would use such services voluntarily and that those who were too confused to do so should have such services ordered for them through administrative or judicial procedures instead of being committed to a mental institution. Criminal or other legal procedures, they say, could be relied upon to protect the older person from those who would take advantage of his mental incompetency. They think that the danger of an older person squandering his property himself or doing harm to himself or others is less than the danger of his being unjustly deprived of his freedom, as he often is under present practices.

Opponents of this view advocate reforms in the present system. They suggest, for example, that the appointment of public guardians and conservators, under the supervision of courts or private agencies, should be considered as a means of eliminating or minimizing the cost of such services. They also advocate more homemaker and other supportive services for those who need but cannot afford such services. This would reduce the incentive for relatives to use commitment procedures as a means of getting supervision and care for older people.

Whichever approach is taken, the goal is to find ways of assuring the elderly person a maximum amount of freedom and yet protect him from conduct that would be injurious to himself or to the public.

Issue 9.

Should public policy allow differentiation in treatment of the aging on the basis of age in the areas of: employment, retirement, pension plans, Social Security benefits, licensing, insurance, housing, credit, taxation, and consumer protection?

At present, age is the determining factor in the enjoyment or denial of many rights. For example, a person may be deprived of his employment by compulsory retirement provisions. How much a person can earn without having his Social Security payments reduced is also determined by age. Requirements for obtaining driver's and other licenses and provisions of insurance policies also have age factors. Age sometimes determine whether a person is eligible for low cost housing.

Obviously, if all age factors were eliminated, older people would lose many of the benefits they now enjoy. The problem is one of identifying the areas in which age should not be the determining factor. Each age-related area should be analyzed to see whether age alone is a sufficient basis for denying older people the rights enjoyed by other age groups. This calls for a review not only of public benefit and taxation programs, but also of the private sector in such areas as housing, union membership, banking practices, and insurance eligibility.

Issue 10.

How do we ensure that State laws governing the administration of facilities, programs, and services are fair to older people? And, how do we ensure that the elderly poor have access to legal services of the same scope and quality as are available to those who can afford them?

In Part One it is stated that there is increasing recognition of: (a) the need of the poor elderly for legal services and (b) the need for greater equity and uniformity of State laws concerning the administration of programs for all older people. With respect to the latter (b), it was noted that a person may be eligible for Medicaid in one State, ineligible in another. There

are also variations in some policies, procedures, and services of local agencies that administer State-aided programs and States often lack laws to control this.

If it is agreed that more uniform and more comprehensive State legislation is desirable, consideration needs to be given to how this can best be obtained. Should the initiative be left entirely to the separate States? Should the Federal Government make the improvement of State legislation a requirement for receiving Federal grants-in-aid to States and communities? Should model laws be developed as guides to States and if so, should the responsibility for developing them rest with voluntary agencies, universities, the Federal Government, or where?

With regard to (a) above, it is known that free legal services have given the elderly poor far less service, in proportion to the needs and numbers, than they have given to other age groups. The legal services programs of the Office of Economic Opportunity, legal aid societies, public defenders, and other traditional programs of free legal services not only tend to represent younger clients, but also devote little effort to obtaining remedial legislation and other reforms in fields that concern the elderly.

Additional financial support and direction is clearly needed in order for the elderly poor to receive appropriate attention. The question is: who is to provide the needed funding? Traditionally, free legal services have been supported from State and community resources, but until the advent of the Federally-aided OEO programs, such services were either non-existent or minimal in most places. Does this indicate that the Federal Government should take the initiative in the further expansion of free legal services programs and if so, should a portion of the funds be earmarked for services to the aged? Or, in view of the current interest in Federal revenue sharing, should more reliance be placed on States and communities to build up adequate programs that give appropriate attention to the legal needs of the elderly?

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